IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

S.B.CIVIL WRIT PETITION NO.5439/1997.

Smt.Jelly & Others. **VERSUS** Board of Revenue & Others.

18.09.2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.Rajneesh Gupta, for the petitioner.
Mr.R.S.Purohit]
Mr.Ajay Gupta] for the respondents.

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Heard learned counsel for the petitioner as well as the learned counsel for the respondents.

The petitioner has challenged the judgment of the learned Board of Revenue whereby the appeal filed by the plaintiffs-respondents against the judgment of the learned Revenue Appellate Authority dismissing the suit filed by the respondents was allowed. The learned trial court decreed the suit. However, on appeal filed by the petitioners, before the learned Revenue Appellate Authority, the suit was dismissed and it was held that the suit was filed beyond the period of limitation.

Learned counsel appearing on behalf of the petitioners has contended that the learned Board of Revenue in reversing the judgment and decree passed by the learned Revenue Appellate Authority has committed error in setting aside the judgment and decree passed by the learned Revenue Appellate Authority dismissing the suit holding that the present suit filed in the year 1974 was not barred by the limitation, and the decree passed by the learned trial court was affirmed.

Learned counsel for the petitioner contended that learned

Revenue Appellate Authority had held that as per the evidence on record the predecessor-in-title of the plaintiffs-respondents has himself admitted in the Exhibit D-1 that the petitioners were in the possession of the land even prior to the execution of the document Exhibit D-1 on 22.06.1963 i.e. in samwat year 2018-2019. It was, therefore, submitted that the present suit which was filed in the year 1974 was beyond the period of 12 years as samwat year 2018 corresponds to 1961 and, therefore, the suit having been filed in the year 1974 was filed beyond the period of limitation of 12 years.

Learned counsel appearing on behalf of the respondents, on the other hand, has taken me through the judgment of the learned Board of Revenue more particularly para 11 of the judgment of the learned Board of Revenue.

I have heard learned counsel for the parties and perused the judgment of the learned Board of Revenue and the courts below.

In para 11 of the judgment dated 23.07.1997 passed by the learned Board of Revenue, the learned Board of Revenue after going through the evidence on record more particularly the evidence by way of jamabandies and khasra girdawari has come to the conclusion that jamabandies for the Samwat Year 2025-2028 and 2029-2032 clearly show the name of Govinda as recorded khatedar. Govinda was the predecessor-in-entitle of the plaintiffs-non petitioners. These facts are not disputed.

Learned Board of Revenue also took into consideration the fact that for the samwat year 2018 and 2019 the khasra girdawari also shows that predecessor-in-title of the plaintiffs, Govinda was in the possession of the land.

The submission of the learned counsel for the petitioner is that as per the revenue record in the samwat year 2015 the name of the petitioners' father Jai Narain was recorded in the khasra girdawari and that he was in the possession of the same. In respect to the above, learned counsel for the respondents has urged that the learned Board of Revenue has on this issue relied upon the judgment of the learned trial court and the evidence of the patwari who was produced in evidence wherein it has clearly been held that so far as the entry in the khasra girdawari for the samwat year 2015 is concerned, the name of Govind has been mentioned and that the name of Govinda, predecessor-in-title of the plaintiffs-non-petitioners has been struck of and that of Jai Narain was introduced. The Patwari was produced on behalf of the plaintiffs-non-petitioners in evidence who clearly deposed that the aforesaid entry of the samwat year 2015 in favour of Jai Narain which has been introduced after cutting the name of Govinda does not bear any endorsement or signatures or authentication by any competent authority. It has, therefore, been rightly rejected by the courts below and more particularly by the learned Board of Revenue and no reliance is required to be placed on the same. It would thus be seen and I am in agreement with the learned Board of Revenue that the reliance on the khasra girdawari for samwat year 2015 has rightly not been placed and the above finding is based upon appreciation of evidence which cannot be assailed in writ petition under Article 226 of the Constitution of India.

From the above it is clear that even in the khasra girdawaries after the samwat year 2015 in 2018 the name of Govinda has been shown and in the subsequent jamabandies and further the name of Govinda appears in the samwat year 2025 to 2032 also which have been produced in the evidence. Thus, the findings which have been arrived at by the learned Board of Revenue based upon the appreciation of the evidence cannot be said to be perverse, and the

same call for no interference.

The case of the petitioners is that the plaintiffs had contended that the suit land had been given on *banta* to the defendants and the same has not been held to be proved nor the theory of the plaintiffs that the said land was mortgaged with the defendants has been proved. Suffice it to say that so far as the plea of limitation which was raised by the defendants, has been raised based upon the plea in the written statement that they are in the possession of the land for over 20 years in their own right. The defendants have failed to prove that the defendants have been in possession of the land over 20 years prior to the filing of the suit in their own right. The findings which have been arrived at based on record show otherwise that the land was in the possession of the plaintiffs as is evident from the judgment of the learned Board of Revenue. Thus, in my view, the judgment of the learned Board of Revenue calls for no interference. The defendants have failed to show that they were in possession for a period of over 20 years prior to the filing of the suit and hence the suit was barred by limitation. If the plaintiff has proved that prior to the filing of the suit the plaintiff was in possession with the period of limitation and he has been dispossessed by the defendants the plaintiff's suit is maintainable even if the plea of the plaintiff that the land was mortgaged or given on *banta* is not proved.

Learned counsel for the petitioners then sought to argue on the basis of the Exhibit D-1 which was alleged to have been executed by Govinda, the predecessor-in-title of the plaintiffs-respondents on 22.06.1963 that the entries which have been made in the revenue records were erroneously made and that in fact the land belonged to the defendants. If the limitation is to be taken w.e.f. 22.06.1963, the suit filed on 16.12.1974 was within the limitation of 12 years from the aforesaid date. Therefore, the suit cannot be

said to be barred by limitation. Even otherwise, the aforesaid document cannot be said to be admissible in evidence as the same is unregistered and amounts to renunciation of title on the part of Govinda, predecessor-in-title of the plaintiffs-non-petitioner, in favour of the defendants-petitioners which requires registration.

Consequently, I find no good ground to interfere with the judgment of the learned Board of Revenue. The writ petition as well as the stay application stand dismissed summarily.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.